

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

**SNMP RESEACH, INC. and SNMP RESEARCH
INTERNATIONAL, INC.,**

Plaintiffs,

v.

**BROADCOM INC.
BROCADE COMMUNICATIONS SYSTEMS LLC
EXTREME NETWORKS, INC.,**

Defendants.

Case No. 3:20-cv-00451

**JOINT MOTION TO EXTEND DISCOVERY DEADLINES
UNDER THE EXISTING SCHEDULING ORDER**

COME NOW the Plaintiffs SNMP Research, Inc. (“SNMP Research”) and SNMP Research International, Inc. (collectively with SNMP Research, “Plaintiffs”), Defendant Broadcom Inc. (“Broadcom”), Defendant Brocade Communications Systems LLC (“Brocade”) and Defendant Extreme Networks, Inc. (“Extreme” and with Broadcom and Brocade, “Defendants”), by and through the undersigned, their respective counsel of record, and pursuant to Federal Rule of Civil Procedure 16, do jointly move this Court for a 30-day extension of the parties’ expert disclosure deadlines and the deadline to exchange final witness lists, and an approximately three-week extension of the close of discovery. No other dates would be affected by this proposed amendment (including but not limited to the dispositive and Daubert motion deadline, the pretrial disclosures and motion in limine deadlines, the pretrial conference date, and the trial date). In support of this motion (“Joint Motion”), the parties state as follows:

1. This lawsuit filed October 26, 2020, concerns Plaintiffs’ claims of copyright infringement and breach of contract and Defendants’ defenses thereto. *See* Compl. (Dkt. 1); Defendants Broadcom Inc. and Brocade Communications Systems LLC’s Joint Motion to Dismiss Plaintiffs’ Complaint or, Alternatively, to Transfer Venue (Dkts. 40–42-2, 48-1–48-17, 51, 51-2–

51-5, 57, 61–61-1, 67, 121–121-1, 122), and Defendant Extreme Networks, Inc.’s Motion to Dismiss or, in the Alternative, to Transfer to the Northern District of California (Dkts. 38–39, 51-1, 55–55-2). As of the filing of this Joint Motion, Defendants’ respective motions seeking dismissal or transfer of venue as to Plaintiffs’ Complaint are fully briefed but are not decided, therefore Defendants have yet to answer Plaintiffs’ Complaint and plead any additional defenses (affirmative or otherwise).

2. On October 15, 2021, the Court entered a Scheduling Order setting the trial in this case for three weeks beginning November 1, 2022. (Dkt. 106.)

3. On October 28, 2021, the parties jointly moved this Court for a new trial date and other relief, as a result of conflicts had by the respective counsel for Plaintiffs and for Defendants Broadcom and Brocade with the November 1, 2022, trial date. (Doc. 112.)

4. Finding good cause, the Court issued an Order granting the parties’ joint motion for a new trial date and other relief (Dkt. 112) and issued an Order entering an Amended Scheduling Order (“Scheduling Order”) (Dkt. 114) setting the opening expert disclosure deadlines for Plaintiffs and Defendants as August 9, 2022, and September 6, 2022, respectively, and disclosure of rebuttal testimony within thirty days after the other party’s disclosure of its opening experts (calculating to September 8, 2022 for Defendants’ rebuttal expert reports; and October 6, 2022 for Plaintiffs’ rebuttal expert reports). Scheduling Order, ¶ 4(c). Additionally, the Scheduling Order set the date for exchange of final witness lists in accordance with Rule 26(a)(3)(A)(i) as September 20, 2022 and set the discovery cut-off deadline as October 18, 2022. Scheduling Order ¶ 4(d) and 4(e).

5. Plaintiff SNMP Research served its First Set of Interrogatories, First Set of Requests for Production of Documents and First Set of Requests for Admission directed to each of the Defendants, respectively, on December 26, 2020 (collectively “Plaintiff’s First Discovery

Requests”) and served its Second Set of Requests for Production of Documents to each of the Defendants on January 29, 2021 (collectively, “Plaintiff’s Second Document Requests”) (Plaintiff’s First Discovery Requests and Plaintiff’s Second Document Requests hereafter “Plaintiff’s Discovery”).

6. Defendants each served their respective Responses and Objections to Plaintiff SNMP Research’s First Discovery Requests on January 25, 2021 and served their respective Responses and Objections to Plaintiff’s Second Document Requests on March 1, 2021. Defendant Extreme served its First Supplemental Objections to Plaintiff SNMP Research’s Discovery on July 22, 2021, and its Second Supplemental Responses and Objections to Plaintiff SNMP Research’s Discovery on August 27, 2021. Defendants Broadcom and Brocade each served supplemental responses to Plaintiff SNMP Research’s Discovery on October 4, 2021.

7. Defendant Extreme served its First Set of Interrogatories and its First Set of Requests for Production of Documents directed to Plaintiffs on August 9, 2021. Defendant Brocade served its First Set of Requests for Production of Documents and its First Set of Requests for Admission directed to Plaintiffs on November 23, 2021.¹

8. On October 4, 2021, Plaintiff SNMP Research filed a Motion to Compel Discovery against Defendant Extreme. (Dkt. 96.)² On December 9, 2021, Plaintiff SNMP Research filed an additional Motion to Compel Discovery Responses against Defendants Broadcom and Brocade

¹ Defendant Broadcom has not yet issued any discovery in this case.

² Plaintiff SNMP Research also had previously filed a Motion to Compel Discovery against all Defendants (*see* Dkt. 60) as well as a Motion to Compel Responses to Plaintiff’s Second Document Requests from Defendants Broadcom and Brocade (*see* Dkt. 69) and a Motion to Compel Responses to Plaintiff’s Second Document Requests from Defendant Extreme (*see* Dkt. 70), which were all addressed by Magistrate Judge Poplin’s Memorandum and Order entered on June 25, 2021 (*see* Dkt. 75), and further referenced by Judge Poplin’s Order April 22, 2022 Memorandum and Order (Dkt. 131). Plaintiff SNMP Research also filed a Motion to Compel Discovery Responses from Defendants Broadcom and Brocade (*see* Dkt. 88) which the parties agreed was mooted when Defendants Broadcom and Brocade served supplemental discovery responses (Dkt. 131 at 2).

(Dkt. 115).

9. The foregoing motions to compel were heard by the Honorable Magistrate Judge Poplin on March 25, 2022. On March 28, 2022, Magistrate Judge Poplin entered an Order granting in part Plaintiff SNMP Research's Motions to Compel Discovery. (Dkt. 124.) On April 22, 2022, Magistrate Judge Poplin also issued a Memorandum and Order further addressing Plaintiff SNMP Research's motions by granting them in part and directed all Defendants to fully respond to the majority of Plaintiff's Discovery within 21 days and directed the parties to meet and confer on certain issues raised by Plaintiff SNMP Research's motions. (Dkt. 131.)

10. As a result, certain issues relating to Plaintiff's Discovery remain for the Parties to meet and confer over and have not yet been resolved. Additionally, Defendants still need to supplement their respective discovery responses as directed by Magistrate Judge Poplin's April 22, 2022, Memorandum and Order. And Plaintiffs are in the process of supplementing their discovery responses in this matter as well.

11. Thus, much of the parties' discovery efforts are ongoing, including the parties' respective efforts at source code review, which Plaintiffs began on April 22, 2022, and which Defendants have yet to begin. The parties expect their respective source code review efforts will take weeks if not months.

12. The parties all need to obtain additional outstanding documents and information relevant to their respective claims and defenses raised in this case before they can be prepared to make expert disclosures.

13. The parties are in agreement that, due to the current outstanding written discovery issues in this matter, additional time to complete document discovery is needed before expert disclosures can be prepared and properly made.

14. The parties are also in agreement that adjusting the schedule for expert report

deadlines necessitates some minor changes to the deadlines for final witness lists and the deadline for close of discovery.

15. For all of the above-referenced reasons, the parties now jointly request that the following deadlines be extended:

- The deadline for Plaintiffs' opening expert disclosures be extended to September 6, 2022 (see Scheduling Order, ¶ 4(c);
- The deadline for Defendants' opening expert disclosures be extended to October 6, 2022 (see, *id.*);
- The deadline for Defendants' rebuttal expert disclosures be extended to October 6, 2022 (see *id.*);
- The deadline for Plaintiffs' rebuttal expert disclosures be extended to November 5, 2022 (see *id.*);
- The deadline for the parties to exchange final witness lists (other than Plaintiffs' rebuttal expert disclosures) be extended from September 20, 2022, to October 20, 2022; (see *id.*, ¶ 4(d)); and
- The deadline for all discovery to be completed be extended from October 18, 2022 to November 11, 2022 (see *id.*, ¶ 4(e)).

16. For the convenience of the Court, a chart identifying the deadlines according to the Scheduling Order (from August 9, 2022 onward, as no changes for prior dates are being sought), both current and proposed, are set forth in the chart below:

| Event | Current Second Amended Scheduling Order (entered 11/1/21; Dkt. 114) | Parties' Proposed Third Amended Scheduling Order |
|---|---|--|
| All dates prior to August 9, 2022 set forth in Dkt. 114 | | |
| Deadline to amend pleadings: | August 9, 2022 | August 9, 2022 |
| Plaintiffs' expert disclosures due: | August 9, 2022 | September 6, 2022 |
| Defendants' expert disclosures due: | September 6, 2022 | October 6, 2022 |
| Defendants' rebuttals due: | September 8, 2022 | October 6, 2022 |

| Event | Current Second Amended Scheduling Order (entered 11/1/21; Dkt. 114) | Parties' Proposed Third Amended Scheduling Order |
|---|---|--|
| Final Witness Lists due: | September 20, 2022 | October 20, 2022 |
| Plaintiffs' rebuttals due: | October 6, 2022 | November 5, 2022 |
| Discovery closes: | October 18, 2022 | November 11, 2022 |
| Dispositive/Daubert motions must be filed by: | November 15, 2022 | November 15, 2022 |
| Pretrial disclosures due: | January 10, 2023 | January 10, 2023 |
| Motions in limine must be filed by: | January 17, 2023 | January 17, 2023 |
| Trial briefs and final pretrial order must be filed by: | February 2, 2023 | February 2, 2023 |
| Deadline to file exhibit list with exhibits pre-marked: | February 6, 2023 | February 6, 2023 |
| Deadline to submit single joint proposal for jury instructions: | February 7, 2023 | February 7, 2023 |
| Pretrial Conference set to occur on: | February 13, 2023 at 3pm | February 13, 2023 at 3pm |
| Technology disclosures due: | February 13, 2023 | February 13, 2023 |
| Trial (which is expected to last 3 weeks) set to occur on: | February 28, 2023 at 9 AM | February 28, 2023 at 9 AM |

17. Rule 16 provides that “[a] schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Here good cause exists for the slight modifications requested, none of which affect the dispositive or Daubert motion deadlines, the pretrial and motion in limine filing deadlines, the pretrial conference date, or the trial date. This will be an expert-intensive case and the parties need additional time for fact discovery before expert

disclosures.

18. In deciding whether good cause exists, the Court also examines the prejudice to the non-moving party. *Leary v. Daeschner*, 349 F.3d 888, 906 (6th Cir. 2003). Here, the Parties are jointly moving so there is no prejudice.

FOR THE FOREGOING REASONS, the parties respectfully request that the Court extend the deadlines in the Court's Amended Scheduling Order as set forth above.

Respectfully submitted this 9th day of May 2022.

/s/ John L. Wood

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